



Federal Highway Administration

[FHWA Docket No. FHWA-2020-0025]

Surface Transportation Project Delivery Program; Florida DOT Audit #4 Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; Request for comment

SUMMARY: The Surface Transportation Project Delivery Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years to ensure the State's compliance with program requirements. This is the fourth and final audit of the Florida Department of Transportation's (FDOT) performance of its responsibilities under the Surface Transportation Project Delivery Program (National Environmental Policy Act (NEPA) Assignment Program). This notice announces and solicits comments on the fourth and final audit report for FDOT.

DATES: Comments must be received on or before [Insert Date 30 Days After Publication].

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590. You may also submit comments electronically at www.regulations.gov. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include

a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. Marisel Lopez Cruz, Office of Project Development and Environmental Review, (407) 867-6402, *marisel.lopez-cruz@dot.gov*, Federal Highway Administration, U.S. Department of Transportation, 400 W. Washington Street, Room 4200, Orlando, FL 32801, or Mr. Patrick Smith, Office of the Chief Counsel, (202) 366-1345, *Patrick.c.smith@dot.gov*, Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at www.regulations.gov.

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's responsibilities for environmental review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of

FHWA. Effective December 14, 2016, FDOT assumed FHWA's responsibilities for environmental review and the responsibilities for reviews under other Federal environmental requirements.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the memorandum of understanding during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The results of each audit must be made available for public comment. The third audit report was published in the Federal Register on June 17, 2020, at 85 FR 36657. This notice announces the availability of the fourth and final audit report for FDOT and solicits comment on same.

Authority: Section 1313 of Public Law 112-141; Section 6005 of Public Law 109-59; 23 U.S.C. 327; 23 CFR 773.

Stepanie Pollack,
Acting Administrator,
Federal Highway Administration.

**Surface Transportation Project Delivery Program
FHWA Audit #4 of the Florida Department of Transportation
May 2019 to April 2020**

Executive Summary

This is a report of the fourth and final audit of the Florida Department of Transportation's (FDOT) assumption of National Environmental Policy Act (NEPA) responsibilities under the Surface Transportation Project Delivery Program. Under the authority of 23 U.S.C. 327, FDOT and the Federal Highway Administration (FHWA) executed a memorandum of understanding (MOU) on December 14, 2016, whereby FHWA assigned, and FDOT assumed, FHWA's NEPA responsibilities and liabilities for Federal-aid highway projects and other related environmental reviews for transportation projects in Florida.

The FHWA formed a team in January 2020 to conduct an audit of FDOT's performance according to the terms of the MOU. The team held internal meetings and reviewed FDOT's 2019 Project Development & Environment (PD&E) Manual and NEPA project files, FDOT's response to FHWA's pre-audit information request (PAIR), and FDOT's NEPA Assignment Self Assessment Summary Report. The team presented initial project file observations to FDOT Office of Environmental Management (OEM) on June 26 and July 28, 2020. The team conducted virtual interviews with FDOT, resource agencies, and prepared preliminary audit results from September 21-24, 2020. The team presented these preliminary observations to FDOT OEM leadership on September 25, 2020.

While FDOT continues to develop, revise, and implement procedures and processes required to carry out the NEPA Assignment Program, it is FHWA's expectation that documentation to support a project's decision will be included in the Statewide Environmental Project Tracker (SWEPT) system prior to project close out. By addressing the observation in this report, FDOT will continue to assure a successful program.

Overall, the team found that FDOT remains committed to delivering a successful NEPA Program. This report describes numerous successful practices, no observations, and one non-compliance observation. The FDOT has carried out the responsibilities it has assumed in keeping with the intent of the MOU and FDOT's application. Through this report, FHWA is notifying FDOT of the one non-compliance observation that requires FDOT to take corrective action. The report concludes with the status of FHWA's non-compliance observations from the first, second, and third audit reviews, including any FDOT self-imposed corrective actions.

Background

The purpose of the audits performed under the authority of 23 U.S.C. 327 is to assess a State's compliance with the provisions of the MOU as well as all applicable Federal statutes, regulations, policies, and guidance. The FHWA's review and oversight obligation entails the need to collect information to evaluate the success of the NEPA Assignment Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the fourth audit in Florida and includes a summary discussion that describes progress since the last audit. This audit is the last of the required audits.

Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). An audit generally is defined as an official and careful examination and verification of accounts and records, especially of financial accounts, by an independent unbiased body. With regard to accounts or financial records, audits may follow a prescribed process or methodology and be conducted by “auditors” who have special training in those processes or methods. The FHWA considers this review to meet the definition of an audit because it is an unbiased, independent, official, and careful examination and verification of records and information about FDOT’s assumption of environmental responsibilities.

The team consisted of NEPA subject matter experts (SME) from FHWA offices in Texas, Georgia, and Headquarters, as well as staff from FHWA’s Florida Division. The diverse composition of the team, as well as the process of developing the review report and publishing it in the Federal Register, are intended to make this audit an unbiased official action taken by FHWA.

The team conducted a careful examination of FDOT policies, guidance, and manuals pertaining to NEPA responsibilities, as well as a representative sample of FDOT’s project files. Other documents, such as the August 2020 PAIR responses and FDOT’s August 2020 Self Assessment Summary Report, also informed this review. In addition, the team interviewed FDOT and resource and regulatory agency staff via video conference. This review is organized around the six NEPA Assignment Program elements: program management; documentation and records management; quality assurance/quality control (QA/QC); legal sufficiency; performance measurement; and training program. In addition, the team considered three cross-cutting focus areas: (1) Environmental Permits; (2) Process Improvements; and, (3) Project Authorizations.

The team defined the timeframe for highway project environmental approvals subject to this fourth audit to be between May 2019 and April 2020, when 635 projects were approved. The team drew judgmental samples totaling 110 projects from data in FDOT’s online file system, SWEPT. In the context of this report, descriptions of environmental documents are consistent with FDOT’s Project Development and Environment Manual. The FHWA judgmentally selected all reevaluations of Environmental Impact Statements (EIS) with Records of Decision (ROD) (3 projects) and Environmental Assessments (EA) with Findings of No Significant Impacts (FONSI) (8 projects). The team selected a random sample of 61 Type 1 Categorical Exclusions (CEs), 16 Type 2 CEs, and 22 Type 2 CE Reevaluations, for a total of 110 projects in the sample. The team reviewed all fiscal project authorization files in the audit period (422 project files) downloaded from FHWA Fiscal Management Information System to determine if the NEPA certification was completed for these projects prior to the authorization. Additionally, for all projects with a NEPA approval date within the audit year (316 projects), SWEPT was used to evaluate the supporting environmental information. The remaining 106 projects used the FDOT Project Approvals Reports to provide a cursory review of the environmental information.

The team submitted a PAIR to FDOT that contained 25 questions covering all 6 NEPA Assignment Program elements. The FDOT responses to the PAIR were used to develop questions for the virtual interviews with FDOT staff.

The team conducted a total of 32 interviews. Interview participants included staff from all seven FDOT District offices and the FDOT Central Office. The team interviewed

FDOT legal and environmental staff. The team also interviewed representatives from the following resource agencies: National Oceanic and Atmospheric Administration - National Marine Fisheries Service; the U.S. Coast Guard; the U.S. Fish and Wildlife Service; U.S. Army Corps of Engineers; and the State Historic Preservation Officer from the Florida Department of State, Division of Historic Resources.

The team compared FDOT policies and procedures (including the published 2019 PD&E Manual) for the audit focus areas to the information obtained during interviews and project file reviews to determine if FDOT's performance of its MOU responsibilities are in accordance with FDOT policies and procedures and Federal requirements. Individual observations were documented during interviews and reviews and combined under the six NEPA Assignment Program elements. The audit results are described below by program element.

Overall Audit Opinion

The team recognizes that FDOT's efforts have included implementing the requirements of the MOU by: processing and approving projects; refining policies, procedures, and guidance documents; refining the SWEPT tracking system for official project files; training staff; implementing a QA/QC Plan; and conducting a self assessment for monitoring compliance with the assumed responsibilities. The team found evidence of FDOT's continuing efforts to train staff in clarifying the roles and responsibilities of FDOT staff, and in educating staff in an effort to assure compliance with all of the assigned responsibilities.

During the fourth audit, the team identified numerous successful practices, no observations, and one non-compliance observation that FDOT will need to address through corrective actions.

The FDOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and FDOT's application. The team finds that FDOT is in substantial compliance with the terms of the MOU. By addressing the non-compliance observation in this report, FDOT will continue to assure a successful program.

Successful Practices and Observations

Successful practices are practices that the team believes are positive, and encourages FDOT to continue or expand those programs in the future. The team identified numerous successful practices in this report. Observations are items the team would like to draw FDOT's attention to, which may improve processes, procedures, and/or outcomes. The team identified no observations in this report.

A non-compliance observation is an instance where the team finds the State is not in compliance or is deficient with regard to a Federal regulation, statute, guidance, policy, State procedure, or the MOU. Non-compliance may also include instances where the State has failed to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities they have assumed. The FHWA expects the State to develop and implement corrective actions to address all non-compliance observations. The team identified one non-compliance observation during this fourth audit.

The team acknowledges that sharing initial results during the closeout and sharing the draft audit report with FDOT provided them the opportunity to clarify any observation, as needed, and/or begin implementing corrective actions to improve the program.

The Audit Report addresses all six MOU program elements as separate discussions.

Program Management

Successful Practices

The FDOT has continued and expanded its working relationships with the resource agencies. The FDOT has been meeting early and often with some resource agencies to discuss ongoing and future projects. This enhanced communication minimizes delays in project delivery and permitting processes. The Efficient Transportation Decision Making process was in place prior to NEPA Assignment and this tool continues to foster good relationships between FDOT and the resource agencies. Districts are beginning to conduct periodic Environmental Technical Advisory Team (ETAT) Webinars instead of annual ETAT meetings to discuss upcoming projects. Additionally, federally funded positions dedicated to FDOT projects reduce delays in project delivery.

The SWEPT is a fundamental component of FDOT's NEPA Assignment success. The SWEPT continues to be a critical and flexible tool in implementing the NEPA Assignment program responsibilities. The review team learned through the interviews that as FDOT users have become more familiar with the SWEPT system, they have praised its usefulness in streamlining the NEPA documentation process. The SWEPT provides standards for documentation in templates, provides a consistent interface, and facilitates the creation of the administrative record. Users also have an opportunity to provide input to improve SWEPT's ability to track project progression. The SWEPT has continued to evolve and now used to support the permitting process for some projects.

The FDOT's internal communication is robust and effective. As FDOT's NEPA Assignment Program matures, communication and relationships continue to improve between FDOT's OEM Staff, District Staff, and consultants. Communications at the program level between OEM and District staff have become a regular part of their day-to-day operations. The OEM engagement through the Project Delivery Coordinators has helped save time on projects and improved consistency. Monthly meetings within the Districts among environmental staff and permit coordinators has improved project development and delivery. One District holds quarterly meetings between permitting, environmental management, and construction offices to discuss outstanding items and issues.

The FDOT Districts accelerate NEPA project delivery through enhanced scoping. The review team learned through interviews that two Districts have staff complete surveys and assessments before the NEPA process begins to accelerate project delivery. Once the NEPA process begins, the District consultants are then able to complete the NEPA phase in a shorter timeframe, without having to wait on seasonal surveys, such as those required for some species, and other information that is needed for the NEPA decisions. This early information gathering is an example of Planning and Environment Linkages to allow for accelerated NEPA project delivery and reduced costs for consultant services in the environmental phase.

Quality Assurance/Quality Control

Successful Practice

The SWEPT provides a QA/QC advantage. The review team learned through interviews that SWEPT provides additional environmental document quality control for the project file. The use of templates in SWEPT and the SWEPT system validation control point prevent project advancement and approval until required documents are uploaded and serve as additional QA/QC tools.

Legal Sufficiency

Successful Practices

The FDOT has an attorney dedicated to Section 4(f) reviews. Section 4(f) is a complex law which is challenging to master and implement. This practice allows FDOT counsel to provide consistent advice, develop subject matter expertise, and allows for streamlined reviews ensuring the analysis meets the legal sufficiency requirements in accordance with 23 CFR Part 774.

Counsel has been fully integrated into the NEPA decisionmaking process. The FDOT Districts routinely contact counsel with questions throughout the NEPA development process. Consulting early and often with counsel has not only expedited the NEPA decisionmaking process but also translated into counsel being invited to participate in other phases of project development and policy matters.

Training Program

The FDOT has continued to focus resources ensuring staff, other agencies, and consultants are adequately trained. In the last year, FDOT again trained more than 2,300 staff, consultants, resource agencies and local agencies in over 100 courses on topics such as Section 4(f), Permits, Wetlands, and the PD&E Manual. Through information presented in the FDOT Self Assessment and the interviews, the review team learned of the variety in, and growth of, FDOT's environmental training program.

Successful Practice

The FDOT has a strong onboarding process when new employees join the OEM. The OEM initiated a 6-month pilot program to conduct weekly sessions led by technical experts. These onboarding mentoring sessions with subject matter experts are being recorded and made available for other FDOT staff to watch on demand.

Performance Measures

Based on information reported in FDOT's 2020 Self Assessment Summary Report, FDOT met, exceeded, or was close to achieving all targets for the review period.

Documentation and Records Management

The team reviewed environmental documentation for 61 Type 1 CEs, 16 Type 2 CEs, and 33 Reevaluations which included RODs, FONSI, and Type 2 CEs to determine if the environmental review met Federal requirements. The team also reviewed 422 fiscal project authorization files to determine if NEPA was completed for these projects prior to the authorization.

Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the project authorization, environmental analysis, or environmental decision.

The team found some CEs that did not have a Statewide Transportation Improvement Program (STIP) page or had an outdated STIP page (10 projects) in their documentation for fiscal constraint. The team also found that some fiscal project authorizations did not have documentation verifying that NEPA was completed (11 projects). FDOT has already updated the SWEPT System by uploading any missing documentation. In addition, FDOT committed to making process improvements to address any remaining concerns.

While the SWEPT system has validation control points in place, there are still opportunities for additional enhancements regarding quality assurance to ensure these documents are included in all project files. It is FHWA's expectation that documentation to support a project's decision will be included in the SWEPT system prior to project close out.

Update from Previous Audit Findings

The FHWA reported a non-compliance observation related to some FDOT project files that lacked documentation to support the environmental analysis or decision as part of Audit #1, Audit #2, and Audit #3. Also, as part of Audit #3, FHWA identified the lack of documentation to support the project authorization. The FDOT and FHWA have productively worked together to resolve documentation issues from these previous audits. The FDOT implemented several process improvements to address noted procedural deficiencies.

2017 Audit #1, Non-Compliance Observation #1 and 2018 Audit #2, Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the environmental analysis or decision.

To address the 2017 and 2018 findings, FDOT implemented enhancements to SWEPT including revisions to the Type 1 CE checklist, the Type 2 CE form, and the reevaluation form. They added STIP/TIP planning consistency uploading instructions, added validation for data within the Type 1 CE checklist for ROW, wetlands, floodplains, and waterways, added an attachment point for the project commitment record in the Type 1 CE checklist, allowed multiple attachments for Section 7 ESA concurrence letters, integrated Section 4(f) approvals for applicable classes of action, and developed a spreadsheet tool for the project managers to verify which documents need to be uploaded to the project file. The FDOT also updated the PD&E manual, conducted training for their staff on the SWEPT and PD&E manual enhancements and on the areas of noted deficiencies. The FDOT also developed computer based training in some of these areas for future use.

2019 Audit #3, Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the project authorization, environmental analysis or decision.

To address the 2019 findings, FDOT implemented enhancements to SWEPT by adding validation for data within the Type 1 CE checklist for bridge permits. The FDOT also updated the PD&E manual, conducted training for their staff on the SWEPT, and made PD&E manual enhancements in the noted deficiency areas. The FDOT also developed computer based training for class of actions, CEs, and environmental assessments.

The improvements made in response to the 2017, 2018, and 2019 observations were assessed during this final audit and are considered sufficient to address the issues underlying the non-compliance observations in those audits.

Finalizing this Report

The FHWA provided a draft of the audit report to FDOT for a 14-day review and comment period. The team considered FDOT's comments in this draft audit report. The FHWA is publishing this notice in the Federal Register for a 30-day comment period in accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will address all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(2)(B). Subsequently, FHWA will publish the final audit report in the Federal Register.

[FR Doc. 2022-27057 Filed: 12/13/2022 8:45 am; Publication Date: 12/14/2022]